ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 82
[FRL-]
Protection of Stratospheric Ozone: The 2006 Critical Use Exemption from the Phaseout of Methyl Bromide
AGENCY: Environmental Protection Agency (EPA)
ACTION: Final Rule.

SUMMARY: EPA is taking final action to exempt methyl bromide production and import for 2006 critical uses. Specifically, EPA is authorizing uses that will qualify for the 2006 critical use exemption, and the amount of methyl bromide that may be produced, imported, or made available from inventory for those uses in 2006. EPA's action is taken under the authority of the Clean Air Act (CAA) and reflects recent consensus Decisions taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) at the 16th and 17th Meetings of the Parties (MOPs) and the 2nd Extraordinary Meeting of the Parties (ExMOP).

EFFECTIVE DATE: This final rule is effective on [**INSERT 2 DAYS AFTER SIGNATURE**].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-OAR-2005-0122. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The Docket telephone number is (202) 566-1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

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SUPPLEMENTARY INFORMATION:

This final rule concerns Clean Air Act restrictions on the consumption, production, and use of methyl bromide (class I, Group VI controlled substance) for critical uses during calendar year 2006. Under the Clean Air Act, methyl bromide consumption and production was phased out on January 1, 2005 apart from certain exemptions, including the critical use exemption and the quarantine and preshipment exemption. With this action, EPA is listing the uses that will qualify for the 2006 critical use exemption, as well as authorizing specific amounts of methyl bromide that may be produced, imported, or made available from inventory for critical uses in 2006.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d) of the CAA, which states: "The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this subsection, apply to actions to which this

subsection applies." CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA nevertheless is acting consistently with the policies underlying APA section 553(d) in making this rule effective on **[INSERT DATE 2 DAYS AFTER SIGNATURE]**. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. This final rule grants an exemption from the phaseout of methyl bromide.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the production, import, export, sale, application and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include:

Category	Examples of Regulated Entities

Industry	Producers, Importers and Exporters of methyl bromide; Applicators, Distributors of methyl bromide; Users of methyl bromide such as farmers of vegetable crops, fruits and seedlings, owners of stored food commodities and structures such as grain mills and processors, and government and non-government researchers.

The above table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is aware could be potentially regulated by this action. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR Part 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **"FOR FURTHER INFORMATION CONTACT"** Section.

II. What is the Background to the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances can be found at 40 CFR Part 82 Subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The United States was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the U.S. could

satisfy its obligations under the Protocol. EPA issued new regulations to implement this legislation and has made several amendments to the regulations since that time.

III. What is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a wide variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the rule on the phaseout schedule for methyl bromide published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018).

The phaseout schedule for methyl bromide production and consumption was revised in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption and extended the phaseout to 2005. The revised phaseout schedule was again amended to allow for an exemption for quarantine and preshipment purposes with a final rule (68 FR 238) on January 2, 2003. Information on methyl bromide can be found at http://www.epa.gov/ozone/mbr and http://www.unep.org/ozone or by contacting EPA's Stratospheric Ozone Hotline at 1-800-296-1996.

Because it is a pesticide, methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Because of this

status, a restricted use pesticide is subject to certain Federal and State requirements governing its sale, distribution, and use. Nothing in this final rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by provisions of this rule must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

IV. What is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties authorize critical use exemptions through their Decisions.

The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a class I, Group VI controlled substance, freezing U.S.

production and consumption at this 1991 level, and, in Section 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001, when the complete phaseout would occur. At their 1995 meeting, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At their 1997 meeting, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout for industrialized countries. In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide exemptions for critical uses. On November 28, 2000, EPA issued regulations to amend the phaseout schedule for methyl bromide and extend the complete phaseout of production and consumption to 2005 (65 FR 70795).

On December 23, 2004 (69 FR 76982), EPA published a final rule in the **Federal Register** (the "Framework Rule") that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from available inventory and new production or import to meet approved critical uses. With this action, EPA is authorizing the uses that will qualify as approved critical uses in 2006 and the amount of the 2006 critical use exemption.

This action reflects Decision XVI/2, taken at the Parties' 16th Meeting in November 2004; Decision Ex.II/I, taken at the Second Extraordinary Meeting of the Parties in July 2005; and Decision XVII/9, taken at the Parties' 17th Meeting in December 2005. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decision IX/6, which sets forth criteria for review of proposed critical uses, as well as the Decisions noted above. For a discussion of the relationship between the relevant provisions of the CAA and Article 2H of the Protocol, and the extent to which EPA takes into account Decisions of the Parties that interpret Article 2H, refer to the December 23, 2004 Framework Rule (69 FR 76984-76985). Briefly, EPA regards certain provisions of Decisions IX/6, XVI/2, Ex.II/1, and XVII/9 as subsequent consensus agreements of the Parties that address the interpretation and application of the critical use provision in Article 2H(5) of the Protocol. In this action, EPA is following the relevant terms of these Decisions. This will ensure consistency with the Montreal Protocol and satisfy the requirements of Section 604(d)(6) and Section 614(b) of the Clean Air Act.

In Decision XVI/2, taken in November 2004, the Parties to the Protocol agreed as follows: "for the agreed critical-use categories for 2006, set forth in section IIA to the annex to the present Decision for each Party, to permit, subject to the conditions set forth in Decision Ex.I/4, to the extent those conditions are applicable, the levels of production and consumption for 2006 set forth in section IIB to the annex to the present Decision which are necessary to satisfy critical uses, with the understanding that additional levels of production and consumption and categories of uses may be approved by the Meeting of the Parties to the Montreal Protocol in accordance with Decision IX/6." Section IIA of

the Annex to Decision XVI/2 lists the following critical use categories for the U.S.: cucurbits - field; dried fruit and nuts; forest nursery seedlings; nursery stock - fruit trees, raspberries, roses; strawberry runners; turfgrass; dry commodities/cocoa beans; dry commodities/structures; eggplant/field; mills and processors; peppers/field; strawberry fruit/field; tomato/field; and orchard replant with a total agreed critical-use level of 6,897,680 kilograms, which is equivalent to 27% of the U.S. 1991 methyl bromide consumption baseline.

In Decision Ex.II/1, taken in July 2005, the Parties to the Protocol agreed as follows: "for the agreed critical uses for 2006, set forth in table A of the annex to the present Decision, to permit, subject to the conditions set forth in the present Decision and in Decision Ex. I/4, to the extent those conditions are applicable, the supplementary levels of production and consumption for 2006 set forth in table B of the annex to the present Decision which are necessary to satisfy critical uses, with the understanding that additional levels and categories of uses may be approved by the Seventeenth Meeting of the Parties in accordance with Decision IX/6." Table A of the Annex to Decision Ex.II/1 lists the following critical use categories for the U.S.: ornamentals; dry-cured ham; dry commodities/structures (cocoa beans); dry commodities/structures (processed foods, herbs and spices, dried milk and cheese processing facilities); eggplant - field, for research only; mills and processors; peppers - field; strawberry fruit - field; tomato - field with a total agreed critical-use level of 1,117,003 kilograms, which is equivalent to 5% of the U.S. 1991 methyl bromide consumption baseline. When combined, the agreed critical use levels for 2006 from Decision XVI/2 and Decision Ex.II/1 total 8,074,683 kilograms, which is equivalent to 32% of the U.S. 1991 methyl bromide consumption

baseline. Decision XVII/9, taken at the 17th Meeting of the Parties in December 2005, authorizes an additional 26.4% of baseline for 6,749,000 kilograms for 2007, and an additional supplemental request of 7,070 kilograms for 2006. This supplemental amount is discussed more fully in Section J below. Based, in part, on the applications underlying the U.S. 2006 nomination, the extensive review of those applications culminating in the preparation of that nomination, and the Decisions noted above, EPA is modifying Columns B and C of Appendix L to 40 CFR Part 82, Subpart A to reflect agreed critical use categories, locations of use, and limiting critical conditions applicable to the 2006 control period.

The question of whether, and to what extent, EPA should adjust the total critical use level agreed by the Parties for 2006 is addressed in Section E below. The question of what amount of the total should come from new production or import, and what amount should come from pre-phaseout inventories, is addressed in Section F below. For the reasons given in those sections, and based, in part, on the applications underlying the U.S. 2006 nomination, the extensive review of those applications culminating in the preparation of that nomination, and the Decisions noted above, EPA is modifying the table in 40 CFR 82.8 to reflect the amount of methyl bromide that may be produced or imported, and sold from pre-phaseout inventories, for the 2006 control period.

V. What is the Critical Use Exemption Process?

A. Background of the Process

Starting in 2002, EPA began notifying applicants as to the availability of an application process for a critical use exemption to the methyl bromide phaseout. On May 8, 2003, the Agency published a notice in the **Federal Register** (68 FR 24737)

announcing the deadline to apply for critical uses for the 2006 calendar year, and directing applicants to announcements posted on EPA's methyl bromide website at *www.epa.gov/ozone/mbr*. Applicants were told they could apply as individuals or as part of a group of users (a "consortium") who face the same limiting critical conditions (i.e., specific conditions which establish a critical need for methyl bromide). This process has been repeated on an annual basis since then. The critical use exemption is designed to meet the needs of methyl bromide users who do not have technically and economically feasible alternatives available.

The criteria for the exemption are delineated in Decision IX/6 of the Parties to the Protocol. In that Decision, the Parties agreed that "a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination." These criteria are reflected in EPA's definition of "critical use" at 40 CFR 82.3.

In response to the annual requests for critical use exemption applications published in the **Federal Register**, applicants have provided information supporting their position that they have no technically and economically feasible alternatives to methyl bromide available to them. Applicants for the exemption have submitted information on their use of methyl bromide, on research into the use of alternatives to methyl bromide,

on efforts to minimize use of methyl bromide and reduce emissions, and on the specific technical and economic research results of testing alternatives to methyl bromide.

EPA's December 23, 2004, Framework Rule describing the operational framework for the critical use exemption (69 FR 76982) established the majority of critical uses for the 2005 calendar year. Today's action authorizes exemptions for 2006 reflecting information that the U.S. Government submitted to the Protocol's Ozone Secretariat in its annual nomination submission in February 2004, as approved by the Parties in November 2004, July 2005, and December 2005. The domestic review process is discussed in detail in a memo titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America" on Docket ID OAR-2005-0122. Briefly, the U.S. Government reviews applications using the criteria in Decision IX/6 and creates a package for submission to the Ozone Secretariat of the Protocol (the "critical use nomination" or CUN). The CUNs of various countries are then reviewed by the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP), which are independent advisory bodies to the Parties. These bodies make recommendations to the Parties regarding the nominations.

On February 7, 2004, the U.S. Government submitted the second *U.S. Nomination for a Critical Use Exemption for Methyl Bromide* to the Ozone Secretariat of the United Nations Environment Programme. This second nomination contained a supplemental request for critical use methyl bromide for 2005 and the initial request for 2006. In June 2004, MBTOC sent questions to the U.S. Government concerning technical and economic issues in the nomination. The U.S. Government transmitted its response on

August 12, 2004. The U.S. submitted a revised request in conjunction with "The U.S. Nomination for Critical Uses for Methyl Bromide in 2007 and Beyond." This revised request was for an additional amount of 622,053 kilograms of methyl bromide for a total of 2,844,985 kilograms of methyl bromide for the year 2006. This revised request was included in the U.S. rebuttal to MBTOC's recommendation issued in its October 2004 report. These documents, together with reports by the advisory bodies noted above, can be accessed on Docket ID OAR-2005-0122.

EPA received five comments requesting the Agency not to exempt any methyl bromide for critical uses. The CAA allows the Agency to create an exemption for critical uses from the production and consumption phaseout of methyl bromide. In Decisions XVI/2, Ex II/1, and XVII/9, the Parties decided to authorize an exemption for uses nominated by the United States. EPA, in conjunction with other U.S. Government entities, spent substantial time reviewing applications for critical use exemptions and preparing a nomination due to the lack of technically and economically feasible alternatives for the nominated uses. Although the Act does not require EPA to establish an exemption, EPA believes the lack of suitable alternatives for the uses listed as approved critical uses in this rulemaking warrants the continuation of the exemption process begun in 2005.

The history of ozone protection programs has been the transition of industries away from production, import, and use of ozone-depleting substances to alternatives. In some instances a successful transition was possible within the allotted time. In other instances, additional time has been required to allow for the development and market penetration of alternatives. In fact, more than ten years after the phaseout of

chlorofluorocarbons (CFCs), the U.S. Government is still exempting the production of CFCs for essential uses in metered dose inhalers. In the instance of critical uses where suitable alternatives are not yet available for all uses, EPA believes it would be inconsistent with the history and the goals of the ozone protection program not to allow for a safety valve in accordance with the provisions of both international and domestic law.

B. How Does This Final Rulemaking Relate to Previous Rulemakings Regarding the Critical Use Exemption?

EPA's December 23, 2004 Framework Rule (69 FR 76982) established the framework for the critical use exemption in the U.S, including trading provisions and recordkeeping and reporting obligations. The Framework Rule defines the terms "critical use allowances" (CUAs) and "critical stock allowances" (CSAs) at 40 CFR 82.3. Each allowance represents the right to produce or import, or to sell from inventory, respectively, one kilogram of methyl bromide for an approved critical use. For example, a distributor with 100 CSAs may sell 100 kilograms of pre-phaseout methyl bromide from inventory for an approved critical use. Today's action authorizes the uses that will qualify as approved critical uses for 2006 and allocates CUAs and CSAs for those uses. In the future, EPA will continue to undertake rulemakings that address both the approved critical uses and the amounts of methyl bromide to be allocated for critical uses in specific control periods.

On August 30, 2005, EPA published a direct final rule and concurrent proposal relating to supplemental critical use exemptions for 2005 (70 FR 51270). These recent notices in the **Federal Register** addressed three additional uses as well as additional

CSAs for supplementary amounts of critical use methyl bromide in 2005. EPA received adverse comments on the direct final rule and published a withdrawal notice in the **Federal Register** on October 18, 2005 (70 FR 60443), which stopped the rule from going into effect. EPA addressed the comments and published a final rule for supplemental 2005 CSAs and uses in the **Federal Register** on December 13, 2005 (70 FR 73604). In this action, the Agency is finalizing: (1) the list of uses that qualify for the critical use exemption in 2006; and (2) the amounts of methyl bromide that may be produced or imported, or supplied from pre-phaseout inventories, for those uses in 2006.

In the proposed rulemaking, published on October 27, 2005 (70 FR 62030), EPA sought comment on critical use exemptions for the 2006 calendar year. Only discrete, specific changes to the operational framework were proposed. Some commenters, however, requested that EPA re-examine significant portions of the operational framework identified in the December 23, 2004 Framework Rule. In this action, EPA is only addressing comments within the scope of the proposal, but may consider additional suggestions pertaining to other areas in future critical use exemption rulemakings. With respect to many of the comments on the operational framework, EPA has already addressed similar points in the Response to Comments document for the Framework Rule, accessible on Docket ID OAR-2005-0122.

With respect to the critical use exemption regulatory process generally, EPA received eight comments expressing concern about the late publication of the proposed rule. EPA understands this concern but notes that the Second Extraordinary Meeting of the Parties, where the final 2006 amounts for critical uses in the U.S. were authorized by the Parties, did not take place until July 1, 2005.

EPA received one comment asking how the critical use exemption process will be affected by the enforcement of ISPM 15 (the international standard for trade in wood packaging material, including dunnage). EPA notes that ISPM 15 is unrelated to the critical use exemption process.

EPA received two comments concerning the term significant market disruption, as described in Decision IX/6. One commenter stated that the proposal was flawed because EPA does not define significant market disruption. A description of EPA's application of this concept is available in the memo titled "Development of the 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America," on E-Dockets OAR-2003-0017, OAR-2004-0506, and OAR-2005-0122. The commenter states that a "significant market disruption" refers to "a decrease or delay in supply or an increase in price of a commodity produced with methyl bromide." EPA views this as one possible type of market disruption. As stated in the memo available on E-docket OAR-2004-0506, "markets are partially defined by the interaction between supply and demand, which determines the price and quantity of a good traded in a market. EPA's position is that a disruption to either side of a commodity market, demand or supply, would result in market disruption." That is, a significant market disruption could be experienced on the demand side as an increase in price, as noted by the commenter, or on the supply side if growers or processors experience a loss of production or delays in production. For example, if the loss of methyl bromide in strawberry production resulted in significant production decreases – and loss of grower income – EPA could determine that it constitutes a significant market disruption.

In determining whether a change in supply or demand is significant, EPA considers several dimensions of which two are key: (1) individual versus aggregate and (2) absolute versus relative. EPA typically evaluates losses at the individual level, *e.g.*, on a per-acre basis. We then extrapolate to the aggregate loss by multiplying this representative loss by the number of acres affected, using crop budgets and other relevant information. EPA balances the two measures to determine whether impacts are significant. For example, if the loss of methyl bromide in Michigan for vegetable production results in shortages and high prices in the upper Midwest, EPA may determine that it constitutes a significant market disruption, even if producers and consumers in the rest of the country are unaffected.

The other key dimension is absolute versus relative impacts. The loss of a single processing plant may not seem significant. However, if there are only three such plants, the loss of one could still result in significant market disruption. EPA relies on detailed crop budgets and other sources of information for data on production costs, gross revenues, and other measures.

One commenter, in requesting a clearer definition of significant market disruption, provided an example of a situation that it did not believe would constitute a significant market disruption. The example was a price increase of less than 1 cent per pound of flour as a result of the use of a methyl bromide alternative. In analyzing this example, however, EPA would look not only at the market price, but also at the effects on users, bearing in mind the dimensions explained above.

C. What are the Approved Critical Uses?

In Decision XVI/2, taken in November 2004, the Parties to the Protocol agreed as follows: "for the agreed critical-use categories for 2006, set forth in section IIA to the annex to the present Decision for each Party, to permit, subject to the conditions set forth in Decision Ex.I/4, to the extent those conditions are applicable, the levels of production and consumption for 2006 set forth in section IIB to the annex to the present Decision which are necessary to satisfy critical uses, with the understanding that additional levels of production and consumption and categories of uses may be approved by the Meeting of the Parties to the Montreal Protocol in accordance with Decision IX/6." Section IIA of the Annex to Decision XVI/2 lists the following critical use categories for the U.S.: cucurbits –field; dried fruit and nuts; forest nursery seedlings; nursery stock - fruit trees, raspberries, roses; strawberry runners; turfgrass; dry commodities/cocoa beans; dry commodities/structures; eggplant field; mills and processors; peppers field; strawberry fruit field; tomato field; and orchard replant. These categories represent a total agreed critical-use level for 2006 of 6,897,680 kilograms, which is equivalent to 27% of the U.S. 1991 methyl bromide consumption baseline.

In Decision Ex.II/1, taken in July 2005, the Parties to the Protocol agreed as follows: "for the agreed critical uses for 2006, set forth in table A of the annex to the present Decision, to permit, subject to the conditions set forth in the present Decision and in Decision Ex. I/4, to the extent those conditions are applicable, the supplementary levels of production and consumption for 2006 set forth in table B of the annex to the present Decision which are necessary to satisfy critical uses, with the understanding that additional levels and categories of uses may be approved by the Seventeenth Meeting of the Parties in accordance with Decision IX/6." Table A of the Annex to Decision Ex.II/1

lists the following critical use categories for the U.S.: ornamentals; dry-cured ham; dry commodities/structures (cocoa beans); dry commodities/structures (processed foods, herbs and spices, dried milk and cheese processing facilities); eggplant – field, for research only; mills and processors; peppers – field; strawberry fruit – field; tomato – field. These categories represent an additional agreed critical-use level for 2006 of 1,117,003 kilograms, which is equivalent to 5% of the U.S. 1991 methyl bromide consumption baseline. When combined, the agreed critical-use levels for 2006 from Decision XVI/2 and from Decision Ex.II/1 total 8,074,683 kilograms, which is equivalent to 32% of the U.S. 1991 methyl bromide consumption baseline. Based, in part, on the applications underlying the U.S. 2006 nomination, the extensive review of those applications culminating in the preparation of that nomination, and the Decisions noted above, EPA is modifying Columns B and C of Appendix L to 40 CFR Part 82, Subpart A to reflect agreed critical-use categories.

Under the December 23, 2004, Framework Rule (69 FR 76982), an approved critical user may obtain access to exempted production/import and limited inventories of pre-phaseout methyl bromide inventory, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of agreed critical uses.

As set out in the Framework Rule, an approved critical user is a self-identified entity who meets the following requirements:

(1) for the applicable control period, applied to EPA for a critical use exemption or is a member of a consortium that applied to EPA for a critical use exemption for a use and location of use that was included in the U.S. nomination, authorized by a Decision of

the Parties to the Montreal Protocol, and then finally determined by EPA in a notice- and-comment rulemaking to be an approved critical use, and

(2) has an area in the applicable location of use that requires methyl bromide fumigation because the user reasonably expects that the area will be subject to a limiting critical condition during the applicable control period.

Using these criteria, an approved critical user could be a tomato farmer in Florida whose farm is over karst topography, but would not include a tomato farmer in Oklahoma even if he too has a farm over karst topography because no exemption application was filed on behalf of Oklahoma tomato farmers. Similarly, a Florida tomato farmer who did not have a field with karst topography, or one of the other limiting critical conditions specified in this rule, would not be an approved critical user because the circumstance of the use is not an approved critical use.

A "limiting critical condition" is the basis on which the critical need for methyl bromide is demonstrated and authorized. It is defined as "the regulatory, technical, and economic circumstances . . . that establish conditions of critical use of methyl bromide in a fumigation area." 40 CFR 82.3. The limiting critical condition placed on a use category reflects certain regulatory, technical, or economic factors that either prohibit the use of alternatives or represent the lack of a technically or economically feasible alternative for that use or circumstance. For example, EPA may determine that a critical use exemption for tomatoes is only necessary for areas of tomato production in karst topography even if the EPA received applications for all of U.S. fresh market tomato production. In this example, not all tomato growers would be eligible to acquire exempted critical use methyl bromide. Only those growers with production in an area

with the limiting critical condition of karst topography would have access to critical use methyl bromide. Another example is as follows: EPA received applications for exemptions for all U.S. grain milling companies that are members of the North American Milling Association (NAMA). The Parties authorized the exemption because grain milling companies have a critical need for methyl bromide because the alternatives can not be used, in part, due to corrosivity to electronic equipment. Thus, one of the limiting critical conditions for this critical use category is the presence of sensitive electronic equipment subject to corrosion associated with fumigation with the alternative. All grain mills that are members of NAMA that have sensitive electronic equipment would be eligible to acquire and use critical use methyl bromide.

EPA is authorizing the critical uses and limiting critical conditions for the year 2006 based on its assessment of the technical and economic feasibility of alternatives and the potential for a significant market disruption if methyl bromide were not available for the uses authorized for 2006. This authorization is based on the information submitted by CUE applicants, as well as public and proprietary data sources. The CUE applications (except to the extent claimed confidential), the U.S. nomination, the questions and answers between the MBTOC and the U.S. Government about the nomination, and procedural memos are all available on Docket ID OAR-2005-0122. Data submitted by the CUE applicants served as a basis for the nomination. EPA and other government experts also sought data from multiple other sources, including but not limited to the National Agricultural Statistics Service of the U.S. Department of Agriculture, the State of California Department of Pesticide Regulation, and proprietary agricultural databases available to EPA. All of the CUE applications underwent a rigorous review by highly

qualified technical experts. A detailed explanation of the nomination process, including the criteria used by expert reviewers, is available in a memo titled "Development of the 2003 Nomination for a Critical Use Exemption for Methyl Bromide from the United States of America" on Docket ID OAR-2005-0122. The memo was originally written to describe the process leading to the 2005 critical use exemption rules, but it applies generally to the process leading to this action.

The U.S. Government, in developing the nomination, defined the limiting critical conditions for which exempted methyl bromide was being sought. The U.S. Government used the information referenced above to determine: (a) whether the lack of availability of methyl bromide for a particular use would result in significant market disruption, and (b) whether there were any technically and economically feasible methyl bromide alternatives available to the user. The analysis was described in the U.S. critical use nomination. The nomination was then sent to the Parties to the Protocol, and the Parties used the information in the nomination and the report from the MBTOC (which was based in part on the iterative exchange of questions and answers with the U.S. Government) as the basis for the Decisions that authorized critical uses.

Based on the information described above, EPA determined that the uses in Table I, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2006, as discussed in Section E. However, as discussed in Section E, some of the circumstances for some of the critical use categories have changed due to recent registrations of an alternative and therefore EPA is decreasing the total CUE level for 2006. EPA has determined, based on the U.S. nomination and its supporting documents, that users who are in a specific geographic location, identified below, or who

are members of a specific industry consortium, identified below, or companies specifically identified below, are approved critical users provided that such users are subject to the specified limiting critical condition(s).

EPA notes the endorsement of emission minimization techniques in paragraph 6 of Decision Ex.II/1 and urges the users listed in Table I to use "emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible." Indeed, many emissions minimization techniques are already being applied, some of which are required in accordance with methyl bromide label requirements. Users should make every effort to decrease overall emissions of methyl bromide by implementing such measures, to the extent consistent with state and local laws and regulations. EPA notes that research continues to be conducted on the potential to reduce application rates and emissions using high-barrier films.

Table I: Approved Critical Uses

Column A	Column B	Column C
Approved Critical Uses	**Approved Critical User and Location of Use**	**Limiting Critical Conditions**
PRE-PLANT USES		
Cucurbits	(a) Michigan growers	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe soilborne fungal disease infestation, or moderate to severe disease infestation could occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes

	(b) Southeastern U.S. except Georgia limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or to a lesser extent: fungal disease infestation and root knot nematodes; or with a need for methyl bromide for research purposes
	(c) Georgia growers	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, moderate to severe fungal disease infestation, or to a lesser extent: root knot nematodes; or with a need for methyl bromide for research purposes
Eggplant	(a) Florida growers	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe disease infestation, or restrictions on alternatives due to karst geology; or with a need for methyl bromide for research purposes
	(b) Georgia growers	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root and collar rots, or moderate to severe southern blight infestation, and to a lesser extent: crown and root rot; or with a need for methyl bromide for research purposes
	(c) Michigan growers	with a reasonable expectation that moderate to severe soilborne fungal disease infestation could occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes
Forest Nursery Seedlings	(a) Members of the Southern Forest Nursery Management Cooperative limited to growing locations in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina and Texas	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation

	(c) Public (government-owned) seedling nurseries in the states of Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia and Wisconsin	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe weed infestation including purple and yellow nutsedge infestation, or moderate to severe Canada thistle infestation, or moderate to severe nematodes, and to a lesser extent: fungal disease infestation
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina and South Carolina	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, moderate to severe disease infestation, and to a lesser extent: nematodes and worms
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Washington and Oregon	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow nutsedge infestation, or moderate to severe fungal disease infestation
	(f) Michigan growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe disease infestation, moderate to severe Canada thistle infestation, moderate to severe nutsedge infestation, and to a lesser extent: nematodes
	(g) Michigan herbaceous perennials growers	with a reasonable expectation that one or more of the following limiting critical conditions already exist or could occur without methyl bromide fumigation: moderate to severe nematodes, moderate to severe fungal disease infestation, and to a lesser extent: yellow nutsedge and other weeds infestation
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's Raspberries and their contract growers in California and Washington)	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative; or with a need for methyl bromide for research purposes
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, medium to heavy clay soils, or a prohibition on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative; or with a need for methyl bromide for research purposes

	(c) California rose nurseries	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes
Strawberry Nurseries	(a) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes; or with a need for methyl bromide for research purposes
	(b) North Carolina, Tennessee and Maryland growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot, or moderate to severe root-knot nematodes, or moderate to severe yellow and purple nutsedge infestation, and to a lesser extent: crown rot; or with a need for methyl bromide for research purposes
Orchard Replant	(a) California stone fruit growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or moderate to severe fungal disease infestation, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes
	(b) California table and raisin grape growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or moderate to severe fungal disease infestation, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes

	(c) California walnut growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes
	(d) California almond growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes
Ornamentals	(a) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes
	(b) Florida growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe weed infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or karst topography; or with a need for methyl bromide for research purposes
Peppers	(a) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes

	(b) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee and Virginia growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root, collar, crown and root rots, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less; or with a need for methyl bromide for research purposes
	(c) Florida growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or karst topography; or with a need for methyl bromide for research purposes
	(d) Georgia growers	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root and collar rots, or moderate to severe southern blight infestation, and to a lesser extent: crown and root rot; or with a need for methyl bromide for research purposes
	(e) Michigan growers	with a reasonable expectation that moderate to severe fungal disease infestation would occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes
Strawberry Fruit	(a) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, or moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, time to transition to an alternative; or with a need for methyl bromide for research purposes
	(b) Florida growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or moderate to severe nematodes, or moderate to severe disease infestation, or karst topography and to a lesser extent: carolina geranium or cut-leaf evening primrose infestation; or with a need for methyl bromide for research purposes

	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, New Jersey, North Carolina, Ohio, South Carolina, Tennessee and Virginia growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or moderate to severe nematodes, or moderate to severe black root and crown rot, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less; or with a need for methyl bromide for research purposes
Tomatoes	(a) Michigan growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe fungal pathogen infestation; or with a need for methyl bromide for research purposes
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, and Tennessee growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less, or karst topography; or with a need for methyl bromide for research purposes
	(c) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes; or with a need for methyl bromide for research purposes
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI)	for the production of industry certified pure sod; with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe bermudagrass, nutsedge and off-type perennial grass infestation, or moderate to severe white grub infestation; or with a need for methyl bromide for research purposes
POST-HARVEST USES		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers' Association.	with a reasonable expectation that one or more of the following limiting critical conditions exists: moderate to severe infestation of beetles, weevils or moths, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative

	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute. (For this rule, "pet food" refers to domestic dog and cat food).	with a reasonable expectation that one or more of the following limiting critical conditions exists: moderate to severe infestation or beetles, moths, or cockroaches, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative
	(c) Kraft Foods in the U.S.	with a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative
	(d) Members of the North American Millers' Association in the U.S.	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe beetle infestation, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative
	(e) Members of the National Pest Management Association treating cocoa beans in storage and associated spaces and equipment in processed food, cheese, dried milk, herbs and spices and spaces in equipments in associated processing facilities.	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe pest infestation, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative
Commodity Storage	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates and pistachios in California	with a reasonable expectation that one or more of the following limiting critical conditions exists : rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives; or with a need for methyl bromide for research purposes
Dry Cured Pork Products	(a) Members of the National Country Ham Association	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermestid beetle or ham mite infestation
	(b) Members of the American Association of Meat Processors	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermestid beetle or ham mite infestation

	(c) Nahunta Pork Center (North Carolina)	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermestid beetle or ham mite infestation

EPA received seven comments on the proposed critical uses. Four commenters stated that the "Southern Forest Nursery Management Cooperative" should have been explicitly identified as an approved critical user. EPA has corrected this omission from the proposed rule. Another commenter proposed revised language describing the National Pest Management Association, discussed the inclusion of dried milk as an approved critical use, and noted that the spelling of the scientific name of a pest described in the corresponding "Limiting Critical Conditions" column was incorrect. EPA has changed the incorrect spelling of "dermisted" beetle to "dermestid" beetle, in the last three paragraphs of the "Limiting Critical Conditions" table. In Decision Ex II/1, issued by the Parties on July 1, 2005, in Table A of the Annex , "dry commodities/structures (processed foods, herbs, and spices, dried milk and cheese processing facilities)" are noted as "agreed critical-use categories." Since dried milk was authorized by the Parties, EPA is including dried milk, as well as cheese processing facilities, in the Approved Critical Uses table. EPA has incorporated this revised language describing the National Pest Management Association because it clarifies that commodities will be fumigated as part of space fumigations.

EPA received one set of comments pertaining to the proposed limiting critical conditions. These comments are addressed in the Response to Comments document for this action, accessible on Docket ID OAR-2005-0122.

EPA notes that an additional error was made in Column B of the Table of Approved Critical Uses concerning the Forest Nursery sector. The states of Idaho, Kansas, Nebraska, Oregon, Utah, and Washington should not have been included as states where publicly owned nurseries are exempted. The corresponding consortia did not apply to EPA for a critical use exemption for 2006 and as a result, were not approved by the Parties and are not approved critical users. Therefore, EPA is not exempting these uses.

D. What are the Uses That May Obtain Methyl Bromide for Research?

The categories listed in Section C above were approved for critical uses for 2006 in Decisions XVI, Ex.II/1, and XVII/9 of the Parties. The amount of methyl bromide approved for research purposes is included in the amount of methyl bromide approved by the Parties for the commodities for which "research" is indicated as a limiting critical condition in Table I above. However, the Agency is not setting aside a specific quantity of methyl bromide to be associated with research activities. Methyl bromide is needed for research purposes including experiments that require methyl bromide as a control chemical with which to compare the trial alternatives' results. EPA is allowing the following sectors to use critical use methyl bromide for research purposes: cucurbits, dried fruit and nuts, nursery stock, strawberry nurseries, turfgrass, eggplant, peppers, strawberry fruit, tomatoes, ornamentals, and orchard replant. These are the sectors that requested methyl bromide for research in their applications to EPA. In Decision XVII/9, the Parties requested that Parties "endeavor to use stocks, where available, to meet any demand for methyl bromide for the purposes of research and development." Although we read this Decision to apply prospectively to amounts authorized by that Decision, for

the above 2006 research uses, we nonetheless encourage all relevant research users to use pre-phaseout inventory, where available, for research purposes.

E. What Amount of Methyl Bromide is Necessary for Critical Uses?

In this section, EPA authorizes the amount of methyl bromide that may be produced or imported for critical uses in 2006, and the amount that may be sold for critical uses from pre-phaseout inventories. Section IIB of the Annex to Decision XVI/2 lists a "permitted level of production and consumption" for the United States in 2006 of 6,897,680 kilograms, which is equivalent to 27% of the 1991 baseline. Table B of the Annex to Decision Ex.II/1 lists a "permitted level of production and consumption" for the United States in 2006 of 760,585 kilograms, which is equivalent to 3% of the 1991 baseline. When combined, the permitted level of production and consumption from the two Decisions is 7,658,265 kilograms, which is equivalent to 30% of the 1991 baseline. Paragraph 2 of Decision Ex.II/1 states, "that a Party with a critical-use exemption level in excess of permitted levels of exempted production and consumption for critical uses is to make up any such difference between those levels by using quantities of methyl bromide available from existing stocks." The difference between the agreed 2006 critical-use exemption level of 8,074,683 kilograms and the permitted level of exempted production and consumption of 7,658,265 kilograms is 416,418 kilograms, which is equivalent to 2% of the 1991 baseline. In accordance with paragraph 2 of Decision Ex.II/1, this amount is to come from inventory. The supplemental amount for 2006, authorized in Decision XVII/9, is also to come from inventory. In this final rule, EPA is determining that an additional amount should come from inventory. A further elaboration of the amounts that

EPA is authorizing to come from inventory and from new exempted production or import in 2006 is found below in Sections F and H.

With this action, the Agency is authorizing critical use levels of methyl bromide for 2006 that are slightly less than the amount authorized by the Parties because of recent registrations of an alternative to methyl bromide, sulfuryl fluoride. As noted above, the U.S. Government submitted the nomination for 2006 critical use exemptions on February 7, 2004. The information in the U.S. nomination reflected the most up-to-date information on alternatives to methyl bromide that was available at that time of submission to the Ozone Secretariat in February 2004. In addition, through an iterative process of questions and answers with the MBTOC, the U.S. Government was able to provide new information about the status of methyl bromide alternatives in the United States for the nominated sectors up until the time the MBTOC issued its final report in the weeks prior to the 2nd Extraordinary Meeting of the Parties in July 2005. Since the MBTOC's final review and report on the 2006 nomination there have been several new actions in the U.S. relevant to uses included in Decision XVI/2 and Decision Ex.II/1. The most recent Federal action, on July 15, 2005, was the issuance of an EPA rule establishing new federal tolerance levels for residues of sulfuryl fluoride in or on commodities in food processing facilities (70 FR 40899). On July 15 EPA also issued a Federal registration for these new uses of sulfuryl fluoride. The Agency received comments confirming that as many as 48 of 50 states subsequently issued state registrations allowing the use of sulfuryl fluoride for these new uses. In addition, on May 18, 2005, the state of California registered sulfuryl fluoride for use in mills, warehouses, stationary transportation vehicles (railcars, trucks, etc.), temporary and permanent

fumigation chambers, and storage structures containing commodities listed on the state-approved label (cereal and small grains, dried fruit, and nuts). The state of California has not approved the label issued by EPA on July 15, 2005. The Federal label permits sulfuryl fluoride use for a wide range of food commodities, such as dried fruits, tree nuts, cereals and small grains, and processed food products. Prior to these registration actions, EPA did not consider sulfuryl fluoride as a technically and economically feasible alternative for these uses. In this action, EPA's determination of critical amounts of methyl bromide for 2006 reflects these changes in the circumstances of the use sectors for which sulfuryl fluoride is a newly registered alternative.

In the Notice of Proposed Rulemaking, EPA estimated that approximately 15% of the post-harvest sectors, for which sulfuryl fluoride is a newly registered alternative, would transition to sulfuryl fluoride during 2006. EPA proposed a 15% reduction in the amount of critical use methyl bromide for the newly registered uses in California, such as mills, dried fruit, and nuts, as well as a 15% reduction in the amount of critical use methyl bromide for the sectors in the U.S. nomination that include food processing facilities, such as mills and processors. EPA's proposed uptake estimate was based on information from a MBTOC report regarding projected uptake of sulfuryl fluoride for previously-registered uses, as well as information in the U.S. nomination for 2007 critical use exemptions. The uptake estimate in the MBTOC report was 10% for the 2005 calendar year for uses for which sulfuryl fluoride was registered in early 2004 (not including the most recent registration in California or the new Federal registration for food processing facilities). EPA also stated in the proposal that the 2007 nomination contained a projection that the specific uses associated with the new registrations and

tolerances would uptake sulfuryl fluoride at a rate of 25% per year. However, the 25% projected uptake rate was projected over a longer period of time and referred to those facilities that would be able to transition at a certain rate. The 2007 Bromide Usage Numerical Index contained an adoption rate of 14% for two sub-sectors of the structures/food facilities sector, which is more comparable to the 2008 Bromide Usage Newer Numerical Index (BUNNI) range of 12%-18%. EPA recognizes that the proposed uptake rate is not necessarily comparable to the MBTOC projection, because the MBTOC's estimate was a reduction factor for all facilities included in the Nomination. The rates in the current 2008 BUNNI analysis reflect the percentage of each structural/food facilities and National Pest Management Association (NPMA) sub-sector that is able to transition per year.

EPA received 13 comments on the estimated uptake of sulfuryl fluoride. Six commenters stated that EPA did not provide a sufficient rationale to justify the 15% reduction in critical use methyl bromide for the uses for which sulfuryl fluoride is now a registered alternative. Three indicated their belief that there was no factual basis for the 15% reduction. Some commenters pointed out that in the 2005 CUE rulemaking, EPA stated that it lacked data to determine market uptake of sulfuryl fluoride. Other commenters noted that actual 2005 data would be available in early 2006, and that the Agency could then propose adequate reductions, based on consumption patterns, when allocating exemptions for 2007. Four commenters noted that the U.S. nomination for 2007 was reviewed and approved by two panels of experts (EPA and the MBTOC) and stated that therefore the uptake estimate should not vary from the percentage identified in that nomination without sufficient review. Another group of commenters expressed

concerns that the estimate did not take into account their inability to use sulfuryl fluoride in situations where all finished product and the majority of the facility's bagged ingredients could not be removed from the premises. Two commenters indicated that the pace of transition to an alternative should not be left wholly up to the market to determine, in view of the environmental benefits from the transition.

As explained below, for purposes of this final rule, EPA is relying on the assessment performed for the U.S. nomination for 2008, rather than arriving at an estimate based on the figures in the MBTOC Report and U.S. nomination for 2007, since the U.S. nomination for 2008 reflects recent information. While EPA indicated in the December 23, 2004 Framework Rule that there was insufficient data at that time to conduct an adequate analysis of the uptake of sulfuryl fluoride, EPA now possesses additional data on sulfuryl fluoride, as reflected in the assessment performed for the U.S. nomination for 2008. This assessment also takes into account the concern raised by the commenter regarding inability to use sulfuryl fluoride in situations where all specified items cannot be removed from the premises.

In the final rule, EPA is reducing post-harvest critical use allowances from the amount that was proposed by 13.66 kilograms to account for an uptake of sulfuryl fluoride for certain post-harvest sectors, including food processing and structures and sub-sectors of the National Pest Management Association (NPMA), of 12-18%. This reduction is equal to less than 0.5% of the 1991 baseline. These sectors are those for which sulfuryl fluoride is registered, and where there are data demonstrating that key pests are controlled by sulfuryl fluoride. Although sulfuryl fluoride is registered for certain commodities, EPA is not making a reduction based on transitions in the

commodity sector at this time due to the lack of sulfuryl fluoride food tolerances in countries where the commodities are exported, such as the European Union and Canada. Because of the complications associated with separating quantities of commodities designated for export markets for which sulfuryl fluoride is not a registered alternative, there is no way to determine at harvest which portion of the commodity will be exported. This issue is further discussed in the "Methyl Bromide CUN for Post-Harvest Use for Commodites" chapter of the 2008 U.S. nomination, available on Docket ID OAR-2005-0122.

Based on the assessment performed for the BUNNI of the 2008 CUN, which is available on Docket ID OAR-2005-0122, a transition rate of between 12%-18% reflects the best available data on the feasible uptake of sulfuryl fluoride in the affected portions of the industry. The 2008 assessment was conducted in January 2006 and reflects current market conditions. The 12%-18% range is based on available data and on professional judgment about the uptake of a new chemical in the market. EPA believes that the projected uptake in 2008 under a business-as-usual scenario can be achieved in 2006 by removing the corresponding amount of methyl bromide from the approved critical use level, for the affected sectors. This is consistent with the environmental goals of EPA's stratospheric ozone program and the definition of "critical uses" in Section 82.3 as uses for which there are no technically and economically feasible alternatives. In the proposed rule, EPA noted that uptake can be relatively slow in the initial period following new registrations. The Agency is only applying this projected uptake factor to the structures-food facilities use areas, as well as sub-sectors of NPMA, as the Agency has determined that regulatory and/or technical and economic barriers exist to the adoption of sulfuryl

fluoride in other post-harvest critical use areas. (For an additional discussion of economic barriers, please see the 2008 CUN, available on Docket ID OAR-2005-0122). Some technical and/or economic conditions may exist, preventing the full adoption of sulfuryl fluoride in the structures-food facilities sector. For instance, no transition was projected for cheese processing plants because there is no information to show that sulfuryl fluoride is effective on mites. The Agency will continue to review data to better evaluate the potential for sulfuryl fluoride to more broadly penetrate the post-harvest market in the future. Such data would include studies that encompass multiple years and multiple locations, and compare sulfuryl fluoride with methyl bromide. Several studies, with similar pests (at high pest pressures), different locations, with similar collection data (trap catch/bioassays) would be needed in order to conduct such an analysis. Therefore, the best available information for the 2006 rule would suggest a rate of adoption of between 12% and 18%, depending on the sector.

During a notice-and-comment rulemaking, EPA responds, in part, to evolving market conditions between the time of the nomination and the applicable control period. The Agency is taking new registrations of sulfuryl fluoride into account in determining the amount of methyl bromide needed for critical uses in 2006. In the notice of proposed rulemaking, the Agency also recognized that the status of other alternatives to methyl bromide could have changed since the finalization of the May 2005 MBTOC report and there could be updated comparative information regarding alternatives and methyl bromide, as well as new data on emission minimization techniques that would allow a user to obtain the same results with smaller quantities of methyl bromide. The Agency invited the public to submit any such updated information.

EPA received three comments on the issue of post-hoc review. One commenter stated concern over the length of the three-year CUE process, during which time many technical and regulatory changes may change the capacity of methyl bromide alternatives. The commenter requested that EPA provide a post-hoc evaluation of alternatives for the pre-plant sector, as well as the post-harvest sector. EPA is not providing a post-hoc assessment of pre-plant alternatives in this rulemaking but may do so in future critical use exemption rulemakings, should the situation in pre-plant sectors warrant a post-hoc assessment. In this rulemaking, EPA did not receive adequate data to support such an assessment. One commenter provided additional information for the post-harvest sector. An additional commenter suggested that EPA wait until all information about methyl bromide use and inventories is available in early 2006 before deciding to reduce methyl bromide beyond the 30% of baseline. EPA believes sufficient information is available at this time to project the uptake of sulfuryl fluoride during 2006. Comments regarding the amount to come from inventory are addressed in a separate section of this preamble.

EPA received eight comments concerning the barriers to adopting other alternatives to methyl bromide. Two commenters discussed the mandated cap on 1,3-Dichloropropene in township caps in California. EPA is aware of this situation and accounted for township cap barriers when developing the 2006 nomination. Five commenters noted several barriers to the adoption of alternatives, such as narrow ranges of climate conditions, plant-back delay, and lack of comprehensive pest control. EPA considered all of these factors when developing the nomination, and also discussed barriers to adoption in the nomination for 2006. In addition, EPA's Office of Pesticide

Programs is currently evaluating all soil fumigants together. More detailed responses to each individual comment are available in the Response to Comments document for this rule, on Docket ID OAR-2005-0122.

EPA received one comment expressing concern that EPA is promoting various alternatives to methyl bromide which are widely known to have severe negative health and environmental impacts. The commenter expressed concern about several alternatives and noted that the environmental risks must be examined before EPA further promotes their use. EPA's Office of Pesticide Programs has a comprehensive registration program in place in order to carefully evaluate the safety of all chemicals, including alternatives to methyl bromide, prior to registration. The Office of Pesticide Programs is currently assessing risks and developing risk management decisions for several soil fumigants, including methyl bromide, to ensure that human health risk assessment approaches are consistent and that the relative risks and benefits of each chemical are considered.

F. What are the Sources of Critical Use Methyl Bromide?

As discussed above and in the December 23, 2004 Framework Rule, an approved critical user may obtain access to exempted production/import of methyl bromide and to limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of agreed critical uses. In Decision XVI/2, Decision Ex.II/1, and Decision XVII/9, the Parties to the Protocol authorized agreed critical-use levels for 2006 of 8,081,753 kilograms, which is equivalent to 32% of the U.S. 1991 methyl bromide consumption baseline and includes the supplemental amount. As noted above, paragraph 2 of Decision Ex.II/1 states, "that a Party with a critical-use exemption level in excess of permitted levels of production and

consumption for critical uses is to make up any such difference between those levels by using quantities of methyl bromide available from existing stocks." The permitted level of production and consumption of critical use methyl bromide in Decision XVI/2 and Decision Ex.II/1 is 7,658,265 kilograms, or 30% of the U.S. 1991 consumption baseline, leaving approximately 2% to come from inventory.

In developing this action, the Agency notes that Decision XVI/2 (para. 4) states that: "each Party which has an agreed critical use should ensure that the criteria in paragraph 1 of Decision IX/6 are applied when licensing, permitting or authorizing critical use of methyl bromide and that such procedures take into account available stocks of banked or recycled methyl bromide," and Decision Ex.II/1 (para. 5) states that: "each Party which has an agreed critical use renews its commitment to ensure that the criteria in paragraph 1 of Decision IX/6 are applied when licensing, permitting or authorizing critical use of methyl bromide and that such procedures take into account quantities of methyl bromide available from existing stocks."

The language in these Decisions is similar to language in Decision Ex I/3, paragraph 5. In the December 23, 2004 Framework Rule, EPA interpreted paragraph 5 of Decision Ex I/3 "as meaning that the U.S. should not authorize critical use exemptions without including provisions addressing drawdown from stocks for critical uses" (69 FR 76987). The December 23, 2004 rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of critical stock allowances (CSAs) and a prohibition on sale of pre-phaseout inventories in excess of the amount of CSAs held by the seller for critical uses. In addition, EPA noted that inventory was further taken into account through the trading provisions that allow critical use

allowances to be converted into critical stock allowances. Under today's final action, no significant changes have been made to those provisions, which remain part of the framework for the critical use exemption and which continue to be in accordance with Decisions of the Parties. Bearing in mind the United States' "renewed commitment" as stated in Decision Ex II/1, and its experience with the 2005 critical use nomination, EPA is, however, exercising its discretion to adjust the portion of critical use methyl bromide to come from exempted production or import as compared to the portion to come from inventory. This action authorizes 6,821,487 kilograms of methyl bromide (27% of baseline) to come from exempted new production or import and 1,136,008 kilograms (5% of baseline) to be made available from pre-phaseout methyl bromide inventories. The percentage of baseline to be taken from pre-phaseout inventories (5%) is the same as that authorized in the Framework Rule for 2005.

EPA received 12 comments on the proportion of critical use methyl bromide coming from pre-phaseout inventories and from new production or import. Eight commenters were concerned with taking only 27% from exempt new production, when the Decisions allow for up to 30%. The commenters said EPA's assumptions about users' ability to obtain methyl bromide from inventory during 2005 were incorrect and indicated that the increased depletion of inventory will increase the cost of the material. Additional comments are detailed below.

With regard to authorizing new production, EPA agrees that Decision Ex II/1 allows up to 30% of the 1991 baseline to come from new production. EPA disagrees, however, that the effect of Decisions XVI/2 and Ex. II/1 is that "7658.28 MT must be allowed to be produced and imported." The Parties agreed to "permit" this level of

production and consumption; they did not –and could not--mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to exempt the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt *any* amount of production and consumption for critical uses ("the Administrator . . . *may* exempt . . .").

As explained above, EPA is continuing to take inventory into account in the same manner as set forth in the Framework Rule. However, EPA has discretion to take additional actions; such actions would be in line with the United States' "renewed commitment." In response to the Notice of Proposed Rulemaking, the commenters did not provide a reason why the amount of critical use methyl bromide to be taken from inventory in 2006 should be less than the amount authorized to be taken from inventory during the bulk of the prior control period. The commenters believe that Decision Ex II/1 suggests a continuation of the commitment previously made,, not a new commitment to reduce levels of production and consumption. While we agree, EPA views continued drawdown of inventory for critical uses at the level authorized in the Framework Rule for 2005 as an appropriate means this year of continuing the commitment previously made, in light of our understanding of current inventory and our analysis of the current needs of users. EPA understands that some commenters object to any regulation of pre-phaseout inventory. The reasons for EPA's limited regulation of such inventory are explained in the Framework Rule and the accompanying Response to Comments document, on Docket ID OAR-2005-0122. That Response to Comments document also responds to the commenters' conclusion that the Parties have implicitly accepted the environmental effects of the full 30%. As explained in the preamble to the Framework Rule, EPA

recognizes that certain users elected not to apply for a critical use exemption because they reasonably believed they could meet their limited transitional needs for methyl bromide from inventory. However, during 2005, EPA was not made aware of any evidence that such users encountered problems as a result of EPA's allocating CSAs equal to 7.5% of baseline. Nor have the commenters provided any compelling evidence that such users would be unable to meet their limited transitional needs during 2006 due to a continuation of the same policy. One commenter stated that it did not have enough CUE pounds of methyl bromide to supply customers, so that users had to access existing inventory previously purchased. However, the commenter did not state that it would not be able to meet their customers' needs during 2006. Other commenters did state that EPA had no basis to assume that critical users have had no difficultly obtaining methyl bromide because most users would have experienced difficulty during the last quarter of the year, after the publication of the proposed rule. Again, EPA is not aware of users having difficulty obtaining methyl bromide from inventory through December, 2005.

Nine commenters stated that it is important to preserve sufficient existing inventory for use in the event of catastrophic loss or an unexpected pest outbreak. EPA agrees with this statement. EPA does recognize that natural disasters may cause disruptions in inventory supply and distribution, and may address this issue in future rulemakings.

Two commenters noted that the accelerated use of inventory will result in inventory being concentrated in the hands of a few large entities and may cause market disruption. EPA recognizes that inventory may not be uniformly distributed and that at some locations, inventory have already been depleted. However, if a particular

distributor holds CSAs but no longer holds pre-phaseout inventories, that distributor can sell the CSAs to another entity that does hold such inventories. Depletion of inventory in a particular geographic area does not mean that approved critical users in that geographic area will necessarily lack access to methyl bromide, as they may be able to obtain methyl bromide produced through the expenditure of CUAs.

Two commenters stated that there may be errors in the amount of methyl bromide that was nominated for each sector, and that as a result, shifting the source of 3% of baseline from new production and import to pre-phaseout inventory may result in insufficient supplies. EPA notes that allocating on a universal basis, with a split between the pre-plant and post-harvest sectors, allows the market to correct for any errors in the amount of methyl bromide estimated to be needed in each sector.

Nine commenters stated a belief that no downward adjustment should be made until EPA has fully evaluated actual data for 2005. These commenters stated that EPA must have a rational basis for its actions. EPA's action is based on its experience with inventory drawdown in 2005 and on data regarding inventory holdings that has been claimed as confidential.

One commenter stated that increased depletion of inventory will increase the cost of methyl bromide. EPA notes that rising costs help encourage the transition to non-ozone-depleting substitutes. In the Response to Comments document for the December 23, 2004 Framework Rule, EPA also stated that economic theory would suggest that an increase in the price of critical use methyl bromide would occur should demand for critical use methyl bromide exceed supply. However, EPA believes critical use demand is not likely to exceed the 32 % of baseline authorized by the Parties.

One commenter stated that no CUAs should be permitted if sufficient inventory is available for critical uses. Another commenter stated that EPA's proposal does not comply with the CAA or the Protocol, specifically Decisions XVI/2, Ex II/1, and IX/6, with regard to accounting for inventory. The commenter stated that in promulgating the Framework Rule, EPA undertook no analysis of how much critical need could be met with existing inventory and refused to disclose the total amount. As a result, according to the commenter, EPA cannot rely in the 2006 rule on its assessment of inventory in the 2005 rules. In addition, the commenter states that the phrase "renews its commitment to ensure" in Decision Ex. II/1 clarifies that the language regarding accounting for inventory in that Decision constitutes a commitment and that similar language in earlier Decisions also constituted a commitment.

To the extent the commenter questions the determinations made as part of the Framework Rule, EPA refers the commenter to the preamble to that rule and the accompanying Response to Comments document. The briefs filed in the litigation concerning the Framework Rule have also been placed in Docket ID OAR-2005-0122. Although EPA disagrees with the commenter's suggestion that the commitment reflected in Decision Ex. II/1 has the legal consequences the commenter suggests, EPA's actions in today's rule are an expression of this U.S. "renewed commitment." In addition, EPA disagrees with the commenter's assumption that the phrase "take into account quantities of methyl bromide available from existing stocks" is susceptible to only one interpretation. EPA has taken available inventory into account both by including stock-related provisions in the Framework Rule and by continuing the allocation of CSAs at a level equal to 5% of baseline in the CUE allocation for 2006. Finally, EPA notes that the

earlier Decisions provide some context for understanding this "renewed commitment"; contrary to the commenter's suggestion, the more recent Decision does not affect the meaning of the earlier ones.

EPA received one comment stating that reporting requirements are being evaded through transfer of legal title to the end users. EPA did not specifically solicit comment on this point but may consider the issue in future rulemakings. In addition, EPA is now requiring that inventory drawdown be reported on an annual basis. This amendment to the regulatory text was made in the 2005 supplemental rule.

Ten commenters stated that EPA has no basis to assume that critical users have had no difficulty obtaining methyl bromide from inventory during 2005 because most users would only be in need of additional methyl bromide after the proposal was issued. However, it does not appear that critical users have had difficulty in obtaining methyl bromide from inventory during the 2005 control period. While the commenters stated that any such difficulty would arise after the issuance of the proposed rule, this final rule is based on a full calendar year's experience. Up until December 9th approved critical users were authorized to obtain up to 30% of baseline from new production and import and up to 5% from inventory. As of December 9th, approved critical users were authorized to obtain an additional 2.5 % of baseline from inventory. We recognize that some users might not have had time to purchase the material prior to the end of the 2005 control period. Therefore, we are relying on the full year's experience with the stock amount authorized for approved critical uses in the Framework Rule. Drawing on this experience, EPA is granting CSAs equivalent to 5% of baseline for the 2006 control period, on the basis that users will continue to be able to access this level of inventory

during 2006. In the proposed rule, we indicated that there was some uncertainty in this determination because the 2005 control period had not yet ended. However, the 2005 control period has now ended. In the proposed rule, we also stated that we anticipated that inventory levels would be lower in 2006. While we continue to anticipate a decline in inventory levels, we do not anticipate that critical users will be unable to obtain needed quantities. We have placed data on inventory holdings in the confidential portion of the docket.

On December 23, 2005, EPA received a letter concerning the impact of the Decision of the Parties taken at their 17th Meeting, concerning critical uses for 2007 and the impact of this Decision on critical uses for the 2006 control period. While this letter did not arrive during the comment period, EPA is addressing it in this final rule because of the subject matter. The letter stated that in light of the Decisions taken at the 17th Meeting, EPA should grant the full 30% of baseline in the form of CUAs for the 2006 control period. The industry group that wrote the letter observed that at the 17th Meeting of the Parties, the Parties authorized up to approximately 20% from new production and 6.25% from inventory for 2007. The letter expressed concerns that taking 5% of baseline from inventory in 2006 and 6.25% in 2007 would result in shortages. EPA has re-examined the available inventory data and has projected multiple scenarios concerning levels of consumption of existing inventory. Based on these efforts, EPA believes that critical users will continue to be able to meet their needs throughout 2006 and 2007 through the anticipated combination of new production and import and inventory drawdown. EPA's analysis is based on data that has been claimed as confidential and therefore has not been included in the public portion of the docket for this rule. While

EPA previously determined that aggregate inventory information for a prior year was not confidential business information, EPA has not made that information public due to the filing of complaints by affected businesses. EPA will continue to monitor CUA and CSA data very closely. If an inventory shortage occurs, EPA may consider various options, including but not limited to promulgating a final version of the proposed petition process, taking into account comments received; proposing a different administrative mechanism to serve the same purpose; or authorizing conversion of a limited number of CSAs to CUAs through rulemaking, bearing in mind the upper limit on U.S. production for critical uses. EPA may also address consideration of inventory to satisfy critical uses for the 2007 control period in a future rulemaking.

In the proposed rule, EPA requested comment on a petition process that would allow an approved critical user to demonstrate inability to acquire sufficient methyl bromide from inventory. Upon receipt of a petition that met the specified criteria, EPA would review the petition and consider converting a limited number of CSAs to CUAs (up to the 30% limit agreed by the Parties).

EPA received 11 on-time comments opposed to the proposed petition process, and one on-time comment in favor. The comments in opposition stated that the petition process was cumbersome and would cause significant additional burden to end-users. Other commenters stated that the October 1 deadline proposed for submittal of a petition would be too early in the calendar year, as most potential CSA shortages are expected to occur during the latest months of the year. One commenter was opposed to the petition process in general but suggested revisions, such as reducing EPA's review period from 30 days to 7 days. One additional commenter objected to the proposed petition process

and stated that EPA had no justification for a process that would lead to increased production, and that a much greater reduction in production and import would be required to comply with Decisions IX/6, XVI/2 and Ex. II/1. The one comment in favor of the petitions noted that the proposed process would prevent unneeded methyl bromide from entering the market, but also stated that the situation would be unlikely to occur. Having considered the comments, EPA concludes that approved critical users do not view the petition process as providing a significant benefit. The petition process was designed to assist approved critical users in the unlikely event that they were unable to obtain a quantity from inventory equal to the number of CSAs allocated in this rulemaking. EPA has received no indication that such a shortage will occur during 2006. Therefore, EPA is not finalizing the proposed petition process and is withdrawing the information collection request (ICR) for this provision that it submitted to OMB under the Paperwork Reduction Act.

G. What are the Critical Use Allowance Allocations?

For 2006, EPA is authorizing production and import of 6,821,487 kilograms of critical use methyl bromide, as shown in Table II below. With this action, EPA is allocating critical use allowances (CUAs) to producers and importers on a pro-rata basis based on their 1991 consumption baseline levels. Each CUA is equivalent to 1 kilogram of critical use methyl bromide. These allowances expire at the end of the control period and, as stated in the Framework Rule, are not bankable from one year to the next. This action allocates the following number of pre-plant and post-harvest critical use allowances (CUAs) to the entities listed below. They will be subject to the trading

provisions at 40 CFR 82.12, which are discussed in section V.(G) of the preamble to the Framework Rule (69 FR 76982).

As discussed in section V.(E) of the preamble to the Framework Rule (69 FR 76990), EPA issues CUEs once a year except in the instance where the Parties authorize supplemental amounts or uses for CUEs.

EPA has modified the CUAs and CSAs that were listed in the October 27, 2005 Notice of Proposed Rulemaking due to the revised adjustment for uptake of sulfuryl fluoride, as well as EPA's determination to allow 27% of baseline for new production and 5% of baseline for CSAs. These adjustments result in a total of 6,315,237 kilograms for pre-plant CUAs and 506,250 kilograms for post-harvest CUAs.

Table II: Allocation of Critical Use Allowances

Company	**2006 Critical use allowances for pre-plant uses* (kilograms)**	**2006 Critical use allowances for post-harvest uses* (kilograms)**
Great Lakes Chemical Corp.	3,838,070	307,673
Albemarle Corp.	1,578,274	126,520
Ameribrom, Inc.	871,872	69,892
TriCal, Inc.	27,020	2,166
Total	*6,315,237*	*506,250*

* For production or import of class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in Appendix L to 40 CFR Part 82.

EPA received eight comments identifying a duplication error in the proposed critical use allocations for 2006 (70 FR 62030). EPA unintentionally duplicated the amount of post-harvest CUAs as “129,934 kilograms” for both Albemarle and Ameribrom. However, the revised post-harvest calculations in this final rule authorize

126,520 post-harvest CUAs for Albemarle and 69,892 for Ameribrom. The revised overall total of post-harvest CUAs is 506,250 kilograms.

Paragraph four of Decision Ex. I/3, taken at the 1st Extraordinary Meeting of the Parties, stated "that Parties should endeavor to allocate the quantities of methyl bromide recommended by the Technology and Economic Assessment Panel as listed in annex II A to the report of the First Extraordinary Meeting of the Parties." Similarly, paragraph four of Decision Ex. II/1 states, "that Parties that have an agreed critical use shall endeavor to license, permit, authorize or allocate the quantities of methyl bromide recommended by the Technology and Economic Assessment Panel to the specific categories of use shown in table A of the annex to the present Decision." In accordance with Decision Ex.I/3, paragraph four, and consistent with the more recent Decision, the Agency endeavored to allocate directly on a sector-by-sector basis by analyzing this option, among others, in August 2004. In the final Framework Rule, the Agency made a reasoned decision as to the economic, environmental and practical effects of implementing the various proposed approaches, after considering public comment. In the August 25, 2004 proposed rulemaking for the allocation framework (69 FR 52366), EPA solicited comment on both universal and sector-based allocation of critical use allowances, as well as more flexible methods for determining allocations. EPA determined in the final Framework Rule (69 FR 76989) that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that there would be significant administrative and practical difficulties associated with a sector-specific approach.

EPA received two on-time comments concerning use-specific allocations. One

commenter stated that CSAs and CUAs should be allocated specifically to each of the sectors as authorized by the Parties, and that the current "lump sum" allocation system delays the transition to alternatives. However, the commenter also stated that if EPA does not implement a use-specific allocation system, the Agency should maintain the current system that differentiates "pre-plant" and "post-harvest" uses. EPA intends to continue differentiating between "pre-plant" and "post-harvest" uses as defined in the Framework Rule (69 FR 76982) for the 2006 control period. EPA's consideration of a use-specific allocation system is summarized below.

In developing the Framework Rule and allocating CUAs for 2005, EPA examined the economic, environmental and administrative effects of various allocation options over the projected life of the CUE exemption program. The Agency found that a universal approach would offer equal environmental protection, at less cost and with easier implementation, than other options such as sector-specific allocation. The Agency adopted a modified universal approach, separating pre-plant from post-harvest uses in order to address concerns raised by smaller, less frequent, and end-of-year uses.

In addition, although the approach adopted in the Framework Rule does not directly allocate allowances to each category of use, the Agency anticipates that reliance on market mechanisms will achieve similar results indirectly. As described in the August 25, 2004 proposed rulemaking and accompanying regulatory impact analysis (E-Docket OAR-2003-0230), the Agency believes that under the universal approach, as divided into pre-plant and post-harvest sectors, the actual critical use will closely follow the sector breakout listed by the TEAP and incorporated into the Parties' Decision. EPA will continue to monitor use sector by sector. A market-based lump sum system will likely

operate to mirror a sector-specific allocation over time, and should not therefore delay the transition to alternatives. For the reasons stated above, and consistent with our current analysis of this issue as it relates to 2006, EPA is not changing the approach previously adopted in the Framework Rule for the allocation of CUAs.

EPA notes that the U.S. Government has spent over $150 million on alternatives research, and continues to develop research priorities. In addition, all critical use exemption applicants are required to have a research plan in order for their requests to be included in the annual nomination.

The other commenter supported the allocation of CUAs to the same pre-plant and post-harvest groupings because critical users require consistency from year to year. EPA is continuing to implement this allocation mechanism.

H. What are the Critical Stock Allowance Allocations?

EPA is allocating 1,136,008 kilograms of critical stock allowances (CSAs) to the entities listed below in Table III for the 2006 control period. The amounts are apportioned to each entity in proportion to inventory held.

EPA addressed the issue of access to inventory for approved critical uses in the October 27, 2005 Notice of Proposed Rulemaking for 2006 allocations (70 FR 62044) and in the December 23, 2004 Framework Rule. EPA is not changing this aspect of the critical use exemption framework through this action.

EPA currently possesses information on existing inventory of methyl bromide that has been claimed as confidential. With regard to data for 2003, EPA has determined that the aggregate inventory information is not confidential business information and may be disclosed but is currently withholding that information due to the filing of complaints by

affected businesses seeking to enjoin the Agency from its release (40 CFR 2.205). EPA will continue to follow its own regulations with respect to the treatment of this information. EPA received one comment requesting that it disclose the amount of inventory held by private sector entities on the grounds that the information is relevant to the outcome of the rule and should therefore be available for public comment under Section 307(d) of the CAA. The commenter refers to arguments made in comments on the framework rule and in legal briefs. EPA's position on these issues is explained in the preamble to the Framework Rule and the responses to comments received on that rule. The comment responses, and legal briefs in the case to which the commenter refers, are available in Docket ID OAR-2005-0122.

Table III: Allocation of Critical Stock Allowances

Company	
Albemarle	Industrial Fumigation Company
Ameribrom, Inc.	J.C. Ehrlich Co.
Bill Clark Pest Control, Inc.	Pacific Ag
Blair Soil Fumigation	Pest Fog Sales Corp.
Burnside Services, Inc.	Prosource One
Cardinal Professional Products	Reddick Fumigants
Carolina Eastern, Inc.	Royster-Clark, Inc.
Degesch America, Inc.	Southern State Cooperative, Inc.
Dodson Bros.	Trical Inc.
Great Lakes Chemical Corp.	Trident Agricultural Products
Harvey Fertilizer & Gas	UAP Southeast (NC)
Helena Chemical Co.	UAP Southeast (SC)
Hendrix & Dail	Univar
Hy Yield Bromine	Vanguard Fumigation Co.
	Western Fumigation
TOTAL - 1,136,008 kilograms	

I. Clarifications to the Framework Rule

EPA is clarifying the Framework Rule regarding consecutive use of non-critical use methyl bromide and critical use methyl bromide. Under 40 CFR 82.13(dd), an approved critical user who purchases a quantity of critical use methyl bromide is required to certify, in part: "I will not use this quantity of methyl bromide for a treatment chamber, facility, or field that I previously fumigated with non-critical use methyl bromide purchased during the same control period" unless certain exceptions apply. This certification, by itself, would not preclude the user from using the critical-use methyl bromide for a treatment chamber, facility, or field that he or she had fumigated earlier that year with non-critical use methyl bromide *purchased during an earlier control period*. However, the prohibition at §82.4(p)(2)(vi) states: "No person who purchases critical use methyl bromide during the control period shall use that methyl bromide on a field or structure for which that person has used non-critical use methyl bromide for the same use (as defined in Columns A and B of Appendix L) in the same control period" unless certain exceptions apply. That prohibition does not distinguish between non-critical use methyl bromide purchased during the current control period and carryover amounts purchased during earlier control periods.

In deciding how to reconcile these two provisions, EPA considered the effect of an amendment contained in the December 13, 2005 **Federal Register** notice concerning the supplemental allocation for 2005. There, EPA amended §82.4(p)(2)(vi) and the certification language in §82.13(dd) so that end users who had been using non-critical use methyl bromide during the first part of 2005 would not be prevented from using critical use methyl bromide on the same field or structure for the same use if they became

approved critical users as a result of that supplemental rulemaking (70 FR 73604). That change would also prevent adverse consequences for end users if the main allocation rule for a particular calendar year were delayed. EPA is reconciling the language in §82.4(p)(2)(vi) and §82.13(dd) by changing the language of the certification to omit the word "purchased" from the sentence that begins "I will not use this quantity of methyl bromide for a treatment chamber, facility, or field that I previously fumigated with non-critical use methyl bromide purchased during the same control period. . .". This approach puts the focus on actions taken during the current control period and provides greater clarity and simplicity by eliminating the date of purchase of non-critical use methyl bromide as an issue.

EPA received eight comments on how to reconcile these two provisions. One commenter was confused about how the proposed change related to the change included in the supplemental rule for 2005. The change included in the supplemental rule addressed situations in which EPA authorizes critical uses during a control period. That change was made because the general prohibition on changing from non-critical-use methyl bromide to critical-use methyl bromide during a control period would otherwise have prevented access to critical-use methyl bromide for the newly authorized uses. The October 27, 2005 proposed rule for 2006 critical uses focused on a separate issue: whether critical users were barred from using critical-use methyl bromide on a field or structure previously fumigated, during the same control period, with *any* non-critical-use methyl bromide, or only a field or structure previously fumigated, during the same control period, with non-critical-use methyl bromide *purchased during that same control period.* The commenter states that EPA did not explain why the change was necessary.

EPA is making the change to make the prohibition in section §82.4(p) consistent with the certification language in §82.13(dd). The change made in the supplemental rule ensures that users who have uses that will be designated as critical uses upon the effective date of this rule will not be prevented from using critical-use methyl bromide as a result of having used non-critical-use-inventory of methyl bromide prior to the critical use designation.

This commenter stated that the proposed rule did not include relevant regulatory text on this issue. Because the change described in the supplemental rule was pending at the time of the proposed rule for this action, EPA chose not to include relevant regulatory text in the proposal, as doing so could have caused additional confusion. The change was adequately described in the preamble. This final rule includes the text of §82.13(dd) as amended through the supplemental rule and through this action.

One commenter states that the Framework Rule allows users to "double-dip" by dividing fields or structures under common ownership into two parts, in order to apply critical-use methyl bromide to the first part and non-critical-use methyl bromide to the second part. However, EPA is not aware of such double-dipping taking place. In this rulemaking for the 2006 control period, we are not revisiting all aspects of the Framework Rule. We proposed a small change to reconcile language in two different sections of that rule. We welcome specific suggestions for improvements to the critical use regulations for consideration in future rulemakings. In this action, however, we are addressing only the aspects of this comment that relate to the specific change proposed. The commenter appears to believe that removing the word "purchased" from §82.13(dd) would allow greater overall usage of methyl bromide. This is not the case. This change

simply conforms the language of the end-user certification with the language of the prohibition in §82.4(p)(2)(vi). It clarifies that, except in the instances noted in the rule, end-users may not use non-critical-use methyl bromide on a particular field or structure and then switch to critical-use methyl bromide for that same field or structure, *regardless of when the non-critical-use methyl bromide was purchased.*

EPA received two comments stating that methyl bromide in pre-phaseout inventory should not be accessed by those without critical needs. While EPA has previously discussed this issue in the Framework Rule, in summary, Decision Ex. II/1 does not require that individual Parties prohibit use of inventory by users whose uses fall outside the categories of agreed critical uses. Nothing in the Protocol or CAA mandates that EPA limit drawdown from existing inventory for such uses. Further details are available in the Response to Comments document for the Framework Rule.

J. Supplemental Critical Use Exemptions for 2006

On January 31, 2005, the U.S. Government submitted a supplemental nomination for 2006 critical use exemptions equivalent to 0.03 % of the 1991 U.S. baseline. The supplemental nomination for 7,070 kilograms for California dried beans was considered "unable to assess" by the MBTOC in its May 2005 report because of a need for clarification about the label for phosphine and the principal pest, the cowpea weevil. The U.S. submitted additional information in August 2005 to the MBTOC, responding to various questions on critical use nominations, including a clarification of the status of the phosphine label with regard to its use for dried beans. In December 2005, the Parties approved the supplemental nomination for 2006 at their 17th Meeting in Dakar, Senegal.

In light of the Parties' approval of the supplemental 2006 nomination, EPA is including this quantity in the critical use levels for 2006.

EPA received one on-time comment concerning the supplemental request for 2006. The commenter objected to granting domestic approval to a critical use category not yet fully reviewed or authorized by the Parties, and was concerned that the public would not have a second opportunity to comment on the supplemental request. EPA was as specific as possible in the October 27, 2005 proposed rule regarding the size and nature of the supplemental request in order to provide the public a full opportunity to comment. There is no significant new information to put before the public at this time. Therefore, a second comment period is unnecessary. The commenter suggests that EPA take a second look at the supplemental amount on the basis of the most up-to-date information. However, in this instance the information that formed the basis of the Parties' Decision is the most up-to-date information available. That information included the U.S. responses to questions from MBTOC in August of 2005. The supplemental request is being authorized through the allocation of additional CSAs.

VI. Statutory and Executive Order Reviews

A. Executive Order No. 12866: Regulatory Planning and Review

Under Executive Order No. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

EPA submitted an information collection request (control number 2179.04) for OMB approval that pertains to the petitioning requirements described in Section E, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. However, as described in that section, EPA is not be finalizing the petitioning requirements in this action and has withdrawn 2179.04 from OMB consideration. The information collection under this final rule is authorized under Sections 603(b), 603(d) and 614(b) of the Clean Air Act (CAA).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing

information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS Code	SIC Code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural Production	1112-Vegetable and Melon farming 1114-Greenhouse, Nursery, and Floriculture	0171-Berry 0171-Berry Crops 0181-Ornamental Floriculture and Nursery products	$0.75 million

Storage Uses	Production 115114-Post-harvest crop activities (except Cotton Ginning) 493110-General Warehousing and Storage 493130-Farm product Warehousing Storage	4221-Farm Product Warehousing and Storage 4225-General Warehousing and Storage	$21.5 million

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. Based on the data provided, EPA estimates that 3,218 entities petitioned EPA for an exemption. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that between one-fourth and one-third of the entities may be small businesses based on the definition given above. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of today's rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this rule are primarily

agricultural entities, producers, importers, and distributors of methyl bromide, as well as any entities holding inventory of methyl bromide.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." (5 U.S.C. §§ 603- 604). Thus, an Agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule will make additional methyl bromide available for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million to $30 million annually, as a result of the entire critical use exemption program over its projected duration. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the

private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector in any one year. The recordkeeping and reporting burden on the private sector associated with this rule is estimated to be under $200,000 on an annual basis. Thus, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect

small governments because it does not create any requirements on any State, local, or tribal government.

E. Executive Order No. 13132: Federalism

Executive Order No. 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order No. 13132. This final rule is expected to primarily affect producers, suppliers, importers, and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on this rule from State and local officials. EPA did not receive comment on this rule from State or local officials.

F. Executive Order No. 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order No. 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order No. 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order No. 13175 does not apply to this rule.

G. Executive Order No. 13045: Protection of Children from Environmental Health & Safety Risks

Executive Order No. 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5-501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order No. 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a "significant energy action" as defined in Executive Order No. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law. No. 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a

rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on **[INSERT 2 DAYS AFTER SIGNATURE].**

List of Subjects in 40 CFR Part 82

Environmental protection; Environmental treaty; Montreal Protocol on Substances that Deplete the Ozone Layer; Ozone depletion; Methyl bromide; Chemicals; Exports, Imports, Production, Reporting and recordkeeping requirements.

_____
Dated:

_____
Stephen L. Johnson,
Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82- PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 USC 7414, 7601, 7671-7671q.

2. Section 82.8 is amended by revising paragraphs (c)(1) and (c)(2) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) Allocated critical use allowances granted for specified control period.

Company	**2006 Critical use allowances for pre-plant uses* (kilograms)**	**2006 Critical use allowances for post-harvest uses* (kilograms)**
Great Lakes Chemical Corp.	3,838,070	307,673
Albemarle Corp.	1,578,274	126,520
Ameribrom, Inc.	871,872	69,892
TriCal, Inc.	27,020	2,166
Total	6,315,237	506,250

* For production or import of class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in Appendix L to this subpart.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2006 on a pro-rata basis in relation to the inventory held by each.

Company	
Albemarle	Industrial Fumigation Company
Ameribrom, Inc.	J.C. Ehrlich Co.
Bill Clark Pest Control, Inc.	Pacific Ag
Blair Soil Fumigation	Pest Fog Sales Corp.
Burnside Services, Inc.	Prosource One

Cardinal Professional Products	Reddick Fumigants
Carolina Eastern, Inc.	Royster-Clark, Inc.
Degesch America, Inc.	Southern State Cooperative, Inc.
Dodson Bros.	Trical Inc.
Great Lakes Chemical Corp.	Trident Agricultural Products
Harvey Fertilizer & Gas	UAP Southeast (NC)
Helena Chemical Co.	UAP Southeast (SC)
Hendrix & Dail	Univar
Hy Yield Bromine	Vanguard Fumigation Co.
	Western Fumigation
TOTAL -1,136,008 kilograms	

3. Section 82.13 is amended by revising paragraph (dd) to read as follows:

§82.13 Recordkeeping and Reporting Requirements for Class I Controlled Substances.

* * * * *

(dd) Every approved critical user purchasing an amount of critical use methyl bromide or purchasing fumigation services with critical use methyl bromide must, for each request, identify the use as a critical use and certify being an approved critical user. The approved critical user certification will state, in part: "I certify, under penalty of law, I am an approved critical user and I will use this quantity of methyl bromide for an approved critical use. My action conforms to the requirements associated with the critical use exemption published in 40 CFR part 82. I am aware that any agricultural commodity within a treatment chamber, facility or field I fumigate with critical use methyl bromide cannot subsequently or concurrently be fumigated with non-critical use methyl bromide during the same control period, excepting a QPS treatment or a treatment for a different use (e.g., a different crop or commodity). I will not use this quantity of

methyl bromide for a treatment chamber, facility, or field that I previously fumigated with non-critical use methyl bromide during the same control period, excepting a QPS treatment or a treatment for a different use (e.g., a different crop or commodity), unless a local township limit now prevents me from using methyl bromide alternatives or I have now become an approved critical user as a result of rulemaking." The certification will also identify the type of critical use methyl bromide purchased, the location of the treatment, the crop or commodity treated, the quantity of critical use methyl bromide purchased, and the acreage/square footage treated, and will be signed and dated by the approved critical user.

4. Appendix L is revised to read as follows:

APPENDIX L TO PART 82 SUBPART A – APPROVED CRITICAL USES, AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2006 CONTROL PERIOD

Column A	**Column B**	**Column C**
Approved Critical Uses	**Approved Critical User and Location of Use**	**Limiting Critical Conditions**
PRE-PLANT USES		
Cucurbits	(a) Michigan growers	with a reasonable expectation that moderate to severe soilborne fungal disease infestation, or moderate to severe disease infestation could occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes

	(b) Southeastern U.S. except Georgia limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or to a lesser extent: fungal disease infestation and root knot nematodes; or with a need for methyl bromide for research purposes
	(c) Georgia growers	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, moderate to severe fungal disease infestation, or to a lesser extent: root knot nematodes; or with a need for methyl bromide for research purposes
Eggplant	(a) Florida growers	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe disease infestation, or restrictions on alternatives due to karst geology; or with a need for methyl bromide for research purposes
	(b) Georgia growers	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root and collar rots, or moderate to severe southern blight infestation, and to a lesser extent: crown and root rot; or with a need for methyl bromide for research purposes
	(c) Michigan growers	with a reasonable expectation that moderate to severe soilborne fungal disease infestation could occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes

Forest Nursery Seedlings	(a) Members of the Southern Forest Nursery Management Cooperative limited to growing locations in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina and Texas	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation
	(c) Public (government owned) seedling nurseries in the states of Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia and Wisconsin	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe weed infestation including purple and yellow nutsedge infestation, or moderate to severe Canada thistle infestation, or moderate to severe nematodes, and to a lesser extent: fungal disease infestation
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina and South Carolina	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, moderate to severe disease infestation, and to a lesser extent: nematodes and worms
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Washington and Oregon	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow nutsedge infestation, or moderate to severe fungal disease infestation

	(f) Michigan growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe disease infestation, moderate to severe Canada thistle infestation, moderate to severe nutsedge infestation, and to a lesser extent: nematodes
	(g) Michigan herbaceous perennials growers	with a reasonable expectation that one or more of the following limiting critical conditions already exist or could occur without methyl bromide fumigation: moderate to severe nematodes, moderate to severe fungal disease infestation, and to a lesser extent: yellow nutsedge and other weeds infestation
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's Raspberries and their contract growers in California and Washington)	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative, or with a need for methyl bromide for research purposes.
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, medium to heavy clay soils, or a prohibition on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative, or with a need for methyl bromide for research purposes.

	(c) California rose nurseries	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached, or with a need for methyl bromide for research purposes.
Strawberry Nurseries	(a) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes; or with a need for methyl bromide for research purposes
	(b) North Carolina, Tennessee and Maryland growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot, or moderate to severe root-knot nematodes, or moderate to severe yellow and purple nutsedge infestation, and to a lesser extent: crown rot; or with a need for methyl bromide for research purposes
Orchard Replant	(a) California stone fruit growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or moderate to severe fungal disease infestation, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes

	(b) California table and raisin grape growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or moderate to severe fungal disease infestation, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes
	(c) California walnut growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes
	(d) California almond growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematodes, or replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes

Ornamentals	(a) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes
	(b) Florida growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe weed infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or karst topography; or with a need for methyl bromide for research purposes
Peppers	(a) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached; or with a need for methyl bromide for research purposes
	(b) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee and Virginia growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root, collar, crown and root rots, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less; or with a need for methyl bromide for research purposes

	(c) Florida growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or karst topography; or with a need for methyl bromide for research purposes
	(d) Georgia growers	with a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or moderate to severe pythium root and collar rots, or moderate to severe southern blight infestation, and to a lesser extent: crown and root rot; or with a need for methyl bromide for research purposes
	(e) Michigan growers	with a reasonable expectation that moderate to severe fungal disease infestation would occur without methyl bromide fumigation; or with a need for methyl bromide for research purposes
Strawberry Fruit	(a) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, or moderate to severe yellow or purple nutsedge infestation, or moderate to severe nematodes, or a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, time to transition to an alternative; or with a need for methyl bromide for research purposes

	(b) Florida growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or moderate to severe nematodes, or moderate to severe disease infestation, or karst topography and to a lesser extent: carolina geranium or cut-leaf evening primrose infestation; or with a need for methyl bromide for research purposes
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, New Jersey, North Carolina, Ohio, South Carolina, Tennessee and Virginia growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or moderate to severe nematodes, or moderate to severe black root and crown rot, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less; or with a need for methyl bromide for research purposes
Tomatoes	(a) Michigan growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe fungal pathogen infestation; or with a need for methyl bromide for research purposes
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, and Tennessee growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation, or moderate to severe nematodes, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less, or karst topography; or with a need for methyl bromide for research purposes

	(c) California growers	with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe nematodes; or with a need for methyl bromide for research purposes
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI)	for the production of industry certified pure sod; with a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe bermudagrass, nutsedge and off-type perennial grass infestation, or moderate to severe white grub infestation; or with a need for methyl bromide for research purposes
POST-HARVEST USES		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers' Association.	with a reasonable expectation that one or more of the following limiting critical conditions exists: moderate to severe infestation of beetles, weevils or moths, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute. (For this rule, "pet food" refers to domestic dog and cat food).	with a reasonable expectation that one or more of the following limiting critical conditions exists: moderate to severe infestation or beetles, moths, or cockroaches, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative

	(c) Kraft Foods in the U.S.	with a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative
	(d) Members of the North American Millers' Association in the U.S.	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe beetle infestation, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative
	(e) Members of the National Pest Management Association treating cocoa beans in storage and associated spaces and equipment in processed food, cheese, dried milk, herbs and spices and spaces and equipment in associated processing facilities.	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe pest infestation, or older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative
Commodity Storage	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates and pistachios in California	with a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives; or with a need for methyl bromide for research purposes

Dry Cured Pork Products	(a) Members of the National Country Ham Association	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermestid beetle or ham mite infestation
	(b) Members of the American Association of Meat Processors	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermestid beetle or ham mite infestation
	(c) Nahunta Pork Center (North Carolina)	with a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: moderate to severe red legged ham beetle, cheese/ham skipper, dermestid beetle or ham mite infestation